Filed 4/11/19 Meruelo v. East West Bank CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

BELINDA MERUELO et al., Plaintiffs and Appellants, v. EAST WEST BANK, Defendant and Respondent.	B279575 Los Angeles County Super. Ct. No. BC593089

APPEAL from a judgment of the Superior Court of Los Angeles County, William F. Fahey, Judge. Affirmed.

Neufeld Marks, Paul S. Marks and Jennifer Mikolevine for Plaintiffs and Appellants.

King, Holmes, Paterno & Soriano, Howard E. King and Seth Miller for Defendant and Respondent.

INTRODUCTION

This case concerns a loan foreclosure and sale of collateral conducted in 2015 by defendant and respondent East West Bank (the bank). Plaintiffs and appellants are Belinda Meruelo (Belinda), the borrower on the foreclosed loan, her son Richard Meruelo (Richard), and 1248 Figueroa Street LLC, a corporate entity managed by Richard and in which Belinda is the only member (the LLC) (collectively, plaintiffs). Plaintiffs claim the bank did not comply with the Uniform Commercial Code, as incorporated into the Commercial Code[1] (UCC), in several respects, and breached the loan agreement. The trial court granted the bank's motion for summary judgment and plaintiffs appeal from the subsequently entered judgment in favor of the bank.

Plaintiffs contend the court erred in granting summary judgment because several triable issues of material fact exist. First, plaintiffs argue the bank failed to provide proper notice of the sale as required under section 9611 because it sent notice to Belinda at her home in Florida and did not send a foreclosure sale notice to a specified address in Downey, California (Downey address). According to plaintiffs, Belinda instructed the bank to use the Downey address for all purposes, including notices required under the loan agreement. The only evidence supporting their theory—a form asking the bank to change the *billing* address for the loan—does not create a triable issue on this point because both the UCC and the loan agreement require a different procedure to change the address for purposes of required notice.

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[1] All undesignated statutory references are to the Commercial Code.

Second, plaintiffs claim that the bank unreasonably failed to give notice of the foreclosure sale to Richard. Richard effectively concedes he does not fall within the group of persons entitled to notice under section 9611. Yet plaintiffs contend the bank was required to notify Richard because he had previously been in contact with the bank, purportedly on his mother's behalf, regarding the loan. We decline to consider this issue because plaintiffs fail to provide any relevant legal authority supporting their position that a bank must notify "the point person" who is "calling the shots," notwithstanding the lack of any formal written notice from the borrower to that effect.

Third, plaintiffs claim the foreclosure sale notice was "deceptively confusing." After reviewing the notice, we conclude no triable issue of material fact exists on this point. The notice was clear and complied with section 9613, as required.

Fourth, plaintiffs suggest triable issues of material fact exist concerning the location of the foreclosure sale, namely, whether the location was "public" within the meaning of the UCC. Plaintiffs did not raise this issue in the trial court and no evidence in the appellant record supports their position.

Finding no triable issue of material fact, we affirm the judgment.

FACTS AND PROCEDURAL BACKGROUND[2]

In 2007, the bank loaned $3,170,000 to Merco Group-2529 Santa Fe Avenue, LLC (Santa Fe), an affiliated company of Meruelo Maddux Properties, Inc. (MMPI) which was managed by Richard, the company's Chief Executive Officer. The transaction (2007 loan) was evidenced by a business loan agreement and a promissory note (2007 note) and was secured by a deed of trust (2007 collateral) relating to real property located in Vernon, California. In 2009, MMPI and Santa Fe filed for Chapter 11 bankruptcy and defaulted on the 2007 loan.

After the default, Belinda purchased the 2007 loan from the bank at a substantial discount. Belinda paid a portion of the purchase price in cash and financed the balance with a loan (2009 loan) from the bank in the amount of $1,470,000. The 2009 transaction was evidenced by a mortgage loan sale agreement in which the bank assigned its interest in the 2007 note and the 2007 collateral to Belinda (2009 sale agreement), a loan agreement (2009 loan agreement), a promissory note (2009 note), and a security agreement (2009 security agreement) in which Belinda pledged her interest in the 2007 loan (including the 2007 note and the 2007 collateral) as security for the 2009 loan.[3] In

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[2] The bank asserts plaintiffs cite pervasively to evidence they submitted to the court, but as to which the court sustained the bank's evidentiary objections. The point is well taken and we disregard plaintiffs' improper citation to evidence not properly before us.

[3] Unbeknownst to the bank, Richard signed Belinda's name to the loan documents, obtained false notary certificates, and submitted them to the bank.

addition, the Meruelo Living Trust, through its trustee Belinda, signed a guaranty (2009 guaranty) of the 2009 loan.

In late 2014, payments on the 2009 loan ceased. On March 3, 2015, the bank sent Belinda two letters (one to her individually and the other to her in her capacity as trustee of the Meruelo Living Trust) notifying her that principal and interest payments had not been made since November 1, 2014, and the loan was delinquent. In its letter to Belinda individually, the bank advised it was exercising its right to accelerate the loan. Two weeks later, on March 16, 2015, the bank sent a second letter (the foreclosure sale notice) to Belinda (and others) identifying the 2009 loan and its collateral, stating the balance of the 2009 loan was due and Belinda was in default, and advising that the bank would sell the collateral for the 2009 note (the 2007 note and the 2007 collateral) to the highest qualified bidder at 10:00 a.m. on April 6, 2015 at the bank's office in Pasadena.

In addition to sending the foreclosure sale notice to Belinda at five different addresses (including the address provided for notices in the 2009 loan agreement), the bank mailed the foreclosure sale notice to two lawyers (Rubin Turner and Louis Zaretsky) who had previously worked with the bank on Belinda's behalf. The bank also sent an email notice regarding the potential foreclosure sale to approximately 500 persons who had previously shown interest in purchasing distressed properties, notes, and trust deeds. The bank advertised the sale in the Los Angeles Business Journal, the Los Angeles Times, and the Wall Street Journal.

The foreclosure sale took place as scheduled and the bank sent Belinda a letter summarizing the disposition on April 13, 2015.

Belinda, Richard, and the LLC[4] filed the present action against the bank in September 2015. The complaint set forth seven causes of action alleging various defects in the foreclosure sale. Plaintiffs later dismissed four causes of action and the court granted the bank's motion for summary judgment on the remaining three causes of action: violation of section 9611 [inadequate notice of sale of collateral], section 9610 [improper disposition of collateral], and breach of contract. The court concluded the bank properly notified Belinda of the impending foreclosure sale and had no obligation to notify Richard or the LLC. In addition, the court noted plaintiffs failed to produce any evidence supporting their contention that the foreclosure sale was conducted in a commercially unreasonable manner and failed to oppose the bank's argument that no breach of contract occurred. The court concluded, in the alternative, that none of the three plaintiffs had standing to bring the three causes of action at issue and, moreover, plaintiffs failed to raise a triable issue of fact concerning the bank's defense of unclean hands.

The court entered judgment in favor of the bank, from which plaintiffs timely appeal.

CONTENTIONS

Plaintiffs contend triable issues of material fact exist as to whether the foreclosure sale was commercially reasonable as required under the UCC. Specifically, plaintiffs assert they raised factual disputes as to whether the bank sent the foreclosure sale notice to the wrong address, the bank intentionally failed to

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[4] In 2009, Belinda purportedly assigned her interest in the 2007 loan to the LLC. The document was signed by Richard on Belinda's behalf.

provide notice of the foreclosure sale to Richard, the foreclosure sale notice was "deceptively confusing", and the foreclosure sale was held in a public place within the meaning of the UCC. Additionally, plaintiffs assert each of them is a proper plaintiff in this matter and triable issues of material fact exist regarding the bank's defense of unclean hands.

DISCUSSION

We address, and reject, each of plaintiffs' arguments regarding the commercial reasonableness of the foreclosure sale. Because our holding on that point is dispositive, it is unnecessary to address the alternative grounds (lack of standing, unclean hands) of the court's summary judgment ruling. (*Filipino Accountants' Assn. v. State Bd. of Accountancy* (1984) 155 Cal.App.3d 1023, 1029–1030 [generally, "when an appellate court concludes that affirmance of the judgment is proper on certain grounds it will rest its decision on those grounds and not consider alternative grounds"].)

1. Standard of Review

The applicable standard of review is well established. "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).) As such, the summary judgment statute (Code Civ. Proc., § 437c), "provides a particularly suitable means to test the sufficiency of the plaintiff's prima facie case and/or of the defendant's [defense]." (*Caldwell v. Paramount Unified School Dist.* (1995) 41 Cal.App.4th 189, 203.) A summary judgment motion must

demonstrate that "material facts" are undisputed. (Code Civ. Proc., § 437c, subd. (b)(1).) The pleadings determine the issues to be addressed by a summary judgment motion. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 885, reversed on other grounds by *Metromedia, Inc. v. City of San Diego* (1981) 453 U.S. 490; *Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74.)

The moving party "bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar, supra,* 25 Cal.4th at p. 850, fn. omitted.) A defendant moving for summary judgment must " 'show[ ] that one or more elements of the cause of action … cannot be established' by the plaintiff." (*Id.* at p. 853 [quoting Code Civ. Proc., § 437c, subd. (o)(2)].) A defendant meets its burden by presenting affirmative evidence that negates an essential element of plaintiff's claim. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334 (*Guz*).) Alternatively, a defendant meets its burden by submitting evidence "that the plaintiff does not possess, and cannot reasonably obtain, needed evidence" supporting an essential element of its claim. (*Aguilar*, at p. 855.)

On appeal from a summary judgment, we review the record de novo and independently determine whether triable issues of material fact exist. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767; *Guz, supra,* 24 Cal.4th at p. 334.) We resolve any evidentiary doubts or ambiguities in favor of the party opposing summary judgment. (*Saelzler,* at p. 768.)

In performing an independent review of the granting of summary judgment, we conduct the same procedure employed by the trial court. We examine (1) the pleadings to determine the elements of the claim, (2) the motion to determine if it establishes

facts justifying judgment in the moving party's favor, and (3) the opposition—assuming movant has met its initial burden—to decide whether the opposing party has demonstrated the existence of a triable, material fact issue. (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 629–630.) We need not defer to the trial court and are not bound by the reasons in its summary judgment ruling; we review the ruling of the trial court, not its rationale. (*Ibid.*)

2. Plaintiffs failed to create a triable issue of material fact regarding the commercial reasonableness of the foreclosure sale.

2.1. East West Bank properly sent the foreclosure sale notice to Belinda's address of record.

Plaintiffs claim the bank was required to—but did not—send the foreclosure sale notice to the Downey address.[5] Because the bank concedes it did not send the foreclosure sale notice to the Downey address, the only issue for our consideration is whether any evidence suggests it was required to do so.

Generally, a secured creditor must "send" proper notice to a debtor (and others) before disposing of collateral by any means including, as pertinent here, through a foreclosure sale.[6] (§ 9611.)

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[5] The Downey address is the home address of an accountant formerly employed by Richard. The accountant issued checks for monthly payments made on the 2009 loan.

[6] Section 9611, subdivisions (b) and (c), state: "(b) Except as otherwise provided in subdivision (d), a secured party that disposes of collateral under Section 9610 shall send to the persons specified in subdivision (c) a reasonable authenticated notification of disposition. [¶] (c) To comply with subdivision (b), the secured party shall send an authenticated notification of disposition to all of the following persons:

" 'Send,' in connection with a record or notification, means to do either of the following: [¶] (A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances. [¶] (B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A)." (§ 9102, subd. (a)(75).)

In addition to the general notice provision of the UCC, the 2009 loan documents set forth the specific procedures the parties needed to follow when providing notice relating to the 2009 loan. Specifically, the 2009 loan agreement provides that any notice or communication to the borrower that is not delivered personally or sent via facsimile must be delivered by registered or certified mail, overnight mail, or overnight courier to Belinda at a specified address on Collins Avenue in Miami Beach, Florida (Collins Avenue address) with a copy to her attorney, Rubin

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(1) The debtor. [¶] (2) Any secondary obligor. [¶] (3) If the collateral is other than consumer goods to both of the following persons: [¶] (A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral. [¶] (B) Any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement with respect to which all of the following apply: [¶] (i) It identified the collateral. [¶] (ii) It was indexed under the debtor's name as of that date. [¶] (iii) It was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date. [¶] (C) Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subdivision (a) of Section 9311."

Turner, at a specified address on Wilshire Boulevard in Beverly Hills, California.

Here, the bank sent the foreclosure sale notice by certified mail to Belinda at the Collins Avenue address with a copy to Rubin Turner, as required by the 2009 loan agreement. The bank also sent written notices to Belinda at four alternative addresses and to another lawyer who previously communicated with the bank on Belinda's behalf, Louis Zaretsky. The undisputed evidence that the bank complied with the 2009 loan agreement notice provisions supports the conclusion that it gave notice of the foreclosure sale in a commercially reasonable manner.

As plaintiffs point out, strict compliance with UCC notice requirements is critical. " 'Notice to the debtor is the mechanism that the Legislature and the drafters of the Uniform Commercial Code chose to ensure that sales of collateral are conducted in a commercially reasonable fashion. Notice serves this purpose by giving the debtor an opportunity to monitor the sale to ensure its commercial reasonableness. The right to a deficiency judgment is conditional and depends on strict compliance with the statutory requirements. As the court stated in *Atlas Thrift Co. v. Horan* [1972] 27 Cal.App.3d 999, 1009, "[t]he rule and requirement are simple. If the secured creditor wishes a deficiency judgment he must obey the law. If he does not obey the law, he may not have his deficiency judgment." ' [Citation.] [¶] 'It is well established in California that failure to comply with the notice requirement precludes the secured party from recovering a deficiency judgment against the "debtor." [Citations.]' [Citation.]" (*Earl of Loveless, Inc. v. Gabele* (1991) 2 Cal.App.4th 27, 32–33.)

Relying on this principle, plaintiffs contend the bank failed to provide proper notice because it mailed the foreclosure sale

notice to the Collins Avenue address rather than the Downey address. Plaintiffs represent that Belinda "essentially had directed the Bank to stop sending mail" to the Collins Avenue address via a change-of-address form that provided the bank with the Downey address. But the change-of-address form plaintiffs provided does not suggest it was intended to change Belinda's address for all purposes. Rather, by its own terms, the form concerns only the *billing* address for 2009 loan. Further, and as plaintiffs concede, "it is not known how the change of address form reached the [b]ank." Thus, plaintiffs failed to produce any evidence they notified the bank of Belinda's change of address for all purposes as required under the 2009 loan agreement, i.e., in writing and by registered or certified mail, personal delivery, facsimile, overnight mail, or overnight courier.

Plaintiffs also complain that the bank sent correspondence to the Downey address for years, including notices of default on the 2009 loan, but provided "no good explanation for why the 'NOTICE OF INTENT TO FORECLOSE' correspondence, but not the actual [foreclosure sale notice], was sent to the Downey address before the sale." Plaintiffs rely in part on *Friendly Finance Corp. v. Bovee* (Del. 1997) 702 A.2d 1225, for the general proposition that notices sent to an incorrect address may not satisfy the UCC notice requirements. In *Friendly Finance*, the court held a creditor failed to comply with the UCC notice requirement by, as pertinent here, mailing notice to the debtor's address listed in the parties' contract. (*Id.* at p. 1228.) The creditor had been notified in writing that the address listed in the contract was no longer valid. (*Ibid.*) Moreover, the creditor *knew* the debtor did not receive the notice: the notice came back to the bank by return mail. (*Ibid.*) *Friendly Finance* is of no assistance

to plaintiffs because there is no evidence the bank received any indication that the notices it sent to the Collins Avenue address were not received.

In sum, the bank sent the foreclosure sale notice to Belinda at the address listed in the contract and provided a copy of the notice to the two lawyers who had worked with the bank on her behalf. We agree with the court's conclusion that there is no triable issue of material fact as to whether the Bank should have mailed the notice to Belinda at a different address.

2.2. East West Bank was not required to send the foreclosure sale notice to Richard.

Plaintiffs also assert that because Richard was purportedly the bank's "main contact" regarding the 2009 loan, it was commercially unreasonable for the bank not to notify Richard of the foreclosure sale.

As we have said, section 9611 required the bank to provide notice of the foreclosure sale to the debtor (Belinda), any secondary obligor, any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral, and any other secured party that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement. (§ 9611, subds. (b), (c).) Plaintiffs do not claim that Richard falls within any of these categories, however. Instead, plaintiffs argue Richard was the bank's "main contact," was "calling the shots," and was trying to "bring the loan current." But even if Richard was the primary point of contact with the bank regarding the 2009 loan, plaintiffs provide no legal authority for their apparent position that the bank was *required* to give notice to Richard simply because he

handled some, or even all, of Belinda's business with the bank on her behalf.

Plaintiffs also claim the bank was required to give Richard notice of the foreclosure sale because he was "a potential bidder at the auction." Again, even if Richard was a potential bidder at the auction, plaintiffs provide no legal authority for their position that such status required the bank to provide him with notice of the foreclosure sale. Indeed, the only legal authority cited on this point is *Gemcap Lending I LLC v. Crop USA Ins. Agency, Inc.* (9th Cir. Mar. 22, 2016, No. 15-56267) 2016 WL 1105352—a memorandum opinion from the Ninth Circuit Court of Appeals—which does not even consider the point argued by plaintiffs here. We therefore pass these points without further analysis. (See *Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556–557 [appellant must demonstrate prejudicial or reversible error based on sufficient legal argument supported by citation to an adequate record]; *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656 [matters not properly raised or that are lacking in adequate legal discussion will be deemed forfeited]; *Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 867 ["[A]n appellant must present argument and authorities on each point to which error is asserted or else the issue is waived"].)

2.3. The notice was not "deceptively confusing."

Plaintiffs contend, in the alternative, that even if notice was properly sent as required under the UCC, the form of the notice was defective in that it was "deceptively confusing."

Section 9613 sets forth the requirements for the type of notice provided here.

"Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification does all of the following:

(A) It describes the debtor and the secured party.

(B) It describes the collateral that is the subject of the intended disposition.

(C) It states the method of intended disposition.

(D) It states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting.

(E) It states the time and place of a public disposition or the time after which any other disposition is to be made."

The bank's foreclosure sale notice satisfies each of these requirements. The text of the first page of the letter reads:

"East West Bank ('Secured Party') is the holder of certain indebtedness (the 'Secured Obligations') of Belinda Meruelo ('Debtor'), including but not limited to that certain Promissory Note dated August 5, 2009 and made payable to the Secured Party in the face principal amount of $1,470,000.00 (the 'Belinda Meruelo Note').

"Pursuant to a Security Agreement dated August 5, 2009 (the 'Security Agreement'), as security for the Secured Obligations, Debtor granted a security interest in all of Debtor's rights to and interest in a Promissory Note dated September 19, 2007, in the original amount of $3,170,000.00, made by Merco Group-2529 Santa Fe Avenue LLC ('Obligor') and payable to the order of Secured Party (the 'Pledged Note'), which note is secured

by a Deed of Trust recorded [on] September 25, 2007, as Instrument No. 20072207462 in the Official Records of Los Angeles County, California. All capitalized terms used in this letter without definition have the meanings ascribed to such terms in the Uniform Commercial Code in effect in the states [*sic*] of California.

"All of the Secured Obligations are due and owing, and Debtor is in default for failure to pay the Belinda Meruelo Note. Specifically, the total outstanding amount owed by Debtor as of March 16, 2015 is $1,249,546.13, including principal $1,219,200.35; interest: $29,520.98; and fees and costs $824.80.

"Lender, as secured party, will sell the Pledged Note to the highest qualified bidder for cash in public as follows:

"Day and Date:	April 6, 2015
Time:	10:00 AM local time
Place:	135 North Los Robles Avenue, 7th Floor, Pasadena, CA 91101"

In short, the letter sets forth all the information required under section 9613.[7]

Plaintiffs first take issue with the letter's subject heading, which states, in boldface type and italics, centered above the text of the letter, "Re: Notice of Continuing Default and Foreclosure." Plaintiffs claim the heading is "confusing" because it does not state, at the top of the letter and in boldface type, "NOTICE OF INTENT TO FORECLOSE" and instead "refers first to a 'continuing default' and only then to a 'foreclosure.' " Plaintiffs' argument is not well taken. The meaning of the letter is stated

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[7] The second page of the letter informed Belinda that she was entitled to an accounting.

plainly and in compliance with section 9613. And plaintiffs' claim that the letter was "deceptive" and was "part of a scheme to hope that no one representing the Meruelo family would know about this Sale," is unsupported.

2.4. Plaintiffs forfeited any argument regarding the commercial reasonableness of the location of the sale by failing to raise the issue below.

Plaintiffs' fourth argument is that there are triable issues of material fact whether the location of the foreclosure sale—the seventh floor of the bank's office building—qualifies as a public place within the meaning of the UCC. Plaintiffs rely on a portion of Richard's declaration in support of their opposition to the motion for summary judgment, in which Richard states that the seventh floor is difficult to access.

We have two responses. First, plaintiffs did not raise this issue in opposition to the bank's motion for summary judgment. Accordingly, we will not consider it. (See *Jackpot Harvesting Co., Inc. v. Superior Court* (2018) 26 Cal.App.5th 125, 155.) Second, and in any event, the court sustained objections to that portion of Richard's declaration upon which plaintiffs rely and therefore that evidence is not properly before this court.[8] Moreover, as Richard was not present at the foreclosure sale, he could have no first-hand information about the accessibility of the sale's location.

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[8] Plaintiffs did not challenge the court's evidentiary rulings in this appeal.

DISPOSITION

The judgment is affirmed. East West Bank shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.